REMARKS

Claims 32-50 were pending in the application. Claims 32-50 have been amended to specify a non-human transgenic animal. Thus, upon entry of this Amendment, claims 32-50 remain pending in the application. No new matter has been added. Applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

Response to Restriction Requirement

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §121.

Group I: Claims 32-40, 43, 44, 47, and 48 drawn to a transgenic organism comprising a transgene comprising a nucleic acid encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide encoding a wild type Tet repressor operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Group II: Claims 32-39, 41, 43, 45, 47, and 49, drawn to a transgenic organism comprising a transgene comprising a nucleic acid molecule encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide encoding a mutated Tet repressor operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Group III: Claims 32-39, 42, 43, 46, 47, and 50, drawn to a transgenic organism comprising a transgene comprising a nucleic acid molecule encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide encoding a GAL4 operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Group IV: Claims 32-39, 42, 43, 46, 47, and 50, drawn to a transgenic organism comprising a transgene comprising a nucleic acid molecule encoding a fusion protein which activates transcription,

the fusion protein comprising a first polypeptide encoding a LexA operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Group V: Claims 32-39, 42, 43, 46, 47, and 50, drawn to a transgenic organism comprising a transgene comprising a nucleic acid molecule encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide encoding a LacR operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Group VI: Claims 32-39, 42, 43, 46, 47, and 50, drawn to a transgenic organism comprising a transgene comprising a nucleic acid molecule encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide encoding a steroid hormone receptor operatively linked to a second polypeptide comprising at least one copy of a mutated acidic HSV VP16;

Applicants hereby elect the Group I invention, ***with traverse***. The claimed invention is drawn to a non-human transgenic animal comprising a transgene comprising a nucleic acid encoding a fusion protein which activates transcription. Applicants submit that ***any DNA binding domain*** can be used in the fusion protein of the invention, and, therefore, the claims are not properly restricted.

The Examiner asserts that "restriction to examination of a single sequence is due to the now very high and undue burden for examining more than one sequence." Applicants respectfully submit that the policy set forth in M.P.E.P. §803.04, clearly provides that a ***reasonable number*** of sequences are allowed to be claimed in a single application. It has been determined that "***normally ten sequences constitute a reasonable number for examination purposes***" and, thus, up to ten independent and distinct sequences are often examined in a single application without restriction. M.P.E.P. §803.04.

Moreover, ***Applicants submit that in applications related to the instant invention, restriction of the invention to a single DNA binding domain was <u>not</u> required by the Examiner***. The above-referenced application is a divisional application of U.S. Application No. 09/577,027, now issued as U.S. Patent No.

6,271,341, which is directed to a fusion protein which activates transcription, the fusion protein comprising a first polypeptide comprising a ***DNA binding domain*** operatively linked to a second polypeptide comprising a transcriptional activation domain, wherein the transcriptional activation domain comprises at least one copy of a mutated acidic region of herpes simplex virus virion protein 16 (HSV VP16). Furthermore, U.S. Application No. 09/577,027 is a divisional application of U.S. Application No. 08/888,080, now issued as U.S. Patent No. 6,087,166, which is directed to an isolated nucleic acid molecule encoding a fusion protein which activates transcription, the fusion protein comprising a first polypeptide comprising ***a DNA binding domain*** operatively linked to a second polypeptide comprising a transcriptional activation domain, wherein the transcriptional activation domain comprises at least one copy of a mutated acidic region of herpes simplex virus virion protein 16 (HSV VP16). For the Examiner's convenience, copies of both the '341 and '166 patents are submitted herewith. As the M.P.E.P. states:

> [i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. § 803.

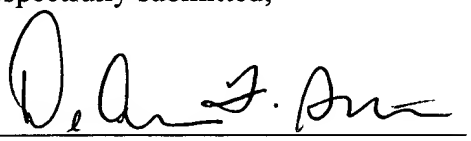
Applicants question how such a search in the prior applications was not a serious burden, but now is considered as such.

Applicants further traverse the restriction requirement between Groups I and II. As amended, claim 32 is directed to a ***non-human transgenic animal*** which comprises a transgene comprising a nucleic acid molecule comprising a first polypeptide comprising a DNA binding domain operatively linked to a second polypeptide comprising a transcriptional activation domain. Applicants submit that wild type and mutant Tet repressors (Groups I and II) are mere embodiments of independent claim 32, and a sufficient search and examination to both the wild type and mutant Tet repressor nucleotide sequences could be made without serious burden on the Examiner,

i.e., searches with regard to a wild type and mutant Tet repressor would be co-inclusive and would not, therefore, involve a serious burden on the Examiner.

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' Attorney at (617) 227-7400.

Respectfully submitted,



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